

THE ERA OF WE-CONSTRUCTION: RECLAIMING THE POLITICS OF ASIAN PACIFIC AMERICAN IDENTITY AND REFLECTIONS ON THE CRITIQUE OF THE BLACK/WHITE PARADIGM

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INTRODUCTION

My six-year-old half-Asian son has just had his first “Ching Chong Chinaman” taunting in school. I was expecting it, but it threw me off-balance nevertheless. He said it hurt his feelings and asked me for answers. I, of course, had none. I thought about what the appropriate response was for a six-year-old whose new consciousness of racism had begun to alter his vision of himself and the world around him irrevocably and forever.

What struck me was that the continuum of possible motivations of the other taunting children—maliciousness, ignorance, imitation—was at that moment irrelevant. At that moment it did not seem appropriate to want my son to understand why some people would make him feel bad. That was not his responsibility. I merely wanted to comfort him

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and to strengthen him, and all I could do was prepare him for the possibility of more.

His Japanese American friend had once been excluded from a game by little white girls because she did not have blue eyes. In the world of the little white girls' parents to whom her father described the incident, the category of blue eyes had no racial content. To them it was an innocent child's category that just as easily could have been blue shoes. We parents of color all felt racial pain. And the little girl, for whatever the multiplicity of reasons, remained on the outside simply because of how she looked. I remember thinking then how white society has such an inability to see the world from any other perspective but that of a normative position.

Lawyers deal in many fictions, not the least of which is that the law is a rational enterprise in which bias, experience, perspective, emotion, and politics form the vessel in which the law comes but do not define its essence. However, while people of color brace against an onslaught of political reaction, I write this Introduction to be freed as well from the fiction that legal scholars engage in solely rational discourse about neutral legal principles and societal norms—and that there is no highly charged political dynamic, sometimes irrational and always emotional, pulsating at the core of the discussion.

Listening to my son, I thought once again how the themes upon which we academics so often pontificate—of race and multiculturalism, of how seemingly neutral rules have racial and gendered meanings—are not confined to the pages of sterile academic journals but are reenacted constantly in infinite ways for countless children in schoolyards across America. And that my son's, his friend's, his classmates', and my own racial world continue to be constructed in terms of hurt and resistance, self-doubt and affirmation; to be fanned by the flames that consumed 100 black churches in the South; and to be mirrored in the roadside highway patrol beatings of Latino immigrants in California, in the killings of Chinese and Vietnamese for the crime of being a "Jap," in the secret slurs uttered in the corporate board rooms of oil companies, and in the legislation to beat back affirmative action, welfare, and immigration. All these are sanctified by a Supreme Court that names its lack of moral vision "colorblindness."

In the final analysis, my academic musings and footnoted theorizing are really just worry—worry about the next time someone pulls up his eyes and mocks singsong pidgin to my children, or worse.

A common understanding of what race is and why it matters becomes increasingly difficult to discern in the cacophony of America's racial discourse. Many scholars, particularly those associated with the Critical Race Theory (CRT) movement in legal scholarship, argue persuasively that whatever the consequences of its existence, the phenomenon of race itself is a social and legal construction.¹ That is, it is less a biological and apolitical condition than a conceptual mechanism by which power and privilege are allocated.² Since the notion of race itself was constructed as a political device to keep people of color subordinated, progressive racial identity must be more than an acknowledgment of appearance and common ancestry. It also must include a common political outlook and agenda based upon a shared worldview that seeks freedom from that subordinated condition.

This Article examines, within the context of Asian Pacific American identity, the notion that progressive political direction is the

1. See, e.g., Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 Am. U. L. Rev. 687 (1996) [hereinafter Chang, *End of Innocence*]; Jayne Chong-Soon Lee, *Navigating the Topology of Race*, 46 Stan. L. Rev. 747 (1994); Critical Race Theory: The Key Writings That Formed the Movement (Kimberlé Crenshaw et al. eds., 1995) [hereinafter Critical Race Theory]; Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 Stan. L. Rev. 1 (1991) [hereinafter Gotanda, *A Critique*]; Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American / Korean American Conflict: How We Constructed Los Angeles*, 66 S. Cal. L. Rev. 1581 (1993); Frank H. Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 B.C. Third World L.J. 225, 229 (1995) [hereinafter Wu, *Neither Black nor White*]. See also Tomas Almaguer, *Racial Fault Lines*, 205-06 (1994); Mary Coombs, *Interrogating Identity*, 2 Afr. Am. L. & Pol'y Rep. 222 (1995) (reviewing Judy Scales-Trent, *Notes of a Black-White Woman: Race, Color, Community* (1995)); Adrienne Davis, *Beyond Black and White: Race-Conscious Policies and the "Other Minorities,"* 45 Am. U. L. Rev. 601 (1996); Ian F. Haney Lopez, *White By Law: The Legal Construction of Race* (1996); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990) [hereinafter Harris, *Race and Essentialism*]; Angela P. Harris, *The Unbearable Lightness of Identity*, 2 Afr. Am. L. & Pol'y Rep. 207 (1995) [hereinafter Harris, *Unbearable Lightness*]; Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 Stan. L. Rev. 819 (1995) [hereinafter Lawrence, *Foreword*]; Lisa Lowe, *Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences*, 1 Diaspora 24 (1991) [hereinafter Lowe, *Heterogeneity*]; Michael Omi & Howard Winant, *Racial Formation in the United States* 55 (1994).

2. See Crenshaw et al., *Introduction, in Critical Race Theory*, *supra* note 1, at xiii. Critical race theorists are united by two common interests: (1) to show the relationship between white supremacy, subordination of people of color, and professed ideas such as "the rule of law" or "equal protection" and (2) to understand and change the bond between racial power and law.

fundamental content of racial identity. Part I will consider the construction of race by the larger society and the construction of counter racial identities by people of color. In particular, it will briefly review the construction of modern Asian Pacific American racial identity. I contend that contemporary pan-Asian Pacific American identity was originally constructed primarily not as an investigation, or even a celebration, of self, but as a political reaction to racial subordination, manifesting and articulating itself through specific positions concerning political events and issues. In that context, I argue that while there is no Asian American essentialized racial voice, the construction of contemporary pan-Asian Pacific American racial identity was and should continue to be the result of the process of forging political and ideological unity along more than racial grounds. In fact, some of the most vociferous objections to the construction of a politicized Asian Pacific American racial identity historically were voiced by other Asians.

Unless the construction of racial identity by people of color continues to be a process of explicit opposition to ideologies of white supremacy in specific political struggles, there is a danger that the progressive content of racial identity will be eviscerated by the very forces that seek to maintain the status quo. Accordingly, Part II will consider the black/white paradigm critique from the standpoint of whether the inadequacy of America's racial vocabulary lies solely within the structure of the black/white paradigm or with the inability of courts and the dominant society to recognize the pervasiveness and effects of white supremacist ideology. The failure to articulate racial identity and consequently racial diversity specifically in political terms relating to antisubordination principles has led to an analytic incoherence. This incoherence has allowed neoconservative interpretations of multiculturalism and anti-essentialism to influence the terms of debate. Thus, Part II closes by looking critically at some of the constructions offered in the recent literature to replace the old paradigm, and warns that unless racial identity continues to be a conscious and explicit rejection of white supremacist ideology manifesting through specific political positions, it will be coopted by the very forces that seek to maintain the present racial status quo.

I. RACE CONSTRUCTION AND ASIAN AMERICANS

If there is any growing sentiment among Asian American legal scholars, it is that race and racial identity are socially constructed.³ This conclusion has been reached not only by Asian Americans but by many others as well.⁴ While it is not the purpose of this article to rearticulate comprehensively the reasoning beyond the view that race is a social and political construct, it may be helpful to review the basic theses.

A. Race as a Political Construction

Constructed race is not simply a biological and immutable attribute such as phenotype or skin color, but "an unstable and 'decentered' complex of social meanings constantly being transformed by political struggle."⁵ Moreover, it is a concept, albeit a powerful one, "which signifies and symbolizes social conflicts and interests by referring to different types of human bodies."⁶

Professor Neil Gotanda has observed that "race is a socially constructed, human category, not a natural or scientific one."⁷ Indeed, the historical categorization of races in the United States has been arbitrary, fluid, and highly political.⁸ Thus, the meaning of race is

3. See, e.g., Chang, *End of Innocence*, *supra* note 1; Gotanda, *A Critique*, *supra* note 1; Ikemoto, *supra* note 1; Lee, *supra* note 1; Wu, *Neither Black nor White*, *supra* note 1.

4. See, e.g., Almaguer, *supra* note 1; Harris, *Race and Essentialism*, *supra* note 1; Lopez, *supra* note 1; Omi & Winant, *supra* note 1.

5. Omi & Winant, *supra* note 1, at 55.

6. *Id.* (emphasis omitted).

7. See Gotanda, *A Critique*, *supra* note 1. Thus, race "is not primarily about fidelity to an individual's lived experience, or a personal right to choose one's own labels; it is about a certain set of political and moral rights and obligations that are argued to arise from a certain history." Harris, *Unbearable Lightness*, *supra* note 1, at 222. Race is a "moral marker of wrongs that have been done and continue to be done" and, in essence, a political marker. *Id.* at 212.

8. Gotanda reviews the creation of the racial category of Black (the "one drop of blood" rule of hypodescent), documents attempts to categorize those of mixed race such as "mulatto" (of mixed ancestry) or "named fractions" (assigned labels according to the fractional composition of racial ancestry such as a "quadroon"), and analyzes legislative classifications of race (the race of an offspring determined by a legislative formula). Gotanda, *A Critique*, *supra* note 1, at 23-36.

constructed by social context and has no fixed content itself.⁹ Racism cannot be ascertained apart from social context.¹⁰

[The] terrain of race has shifted between definitions of (1) race as biological characteristics, historical commonality, or essential identity, and (2) race as the erroneous categorization of people, or the false attribution of traits to people. Both definitions, however, locate race as an attribute within people rather than as a complex set of relations between people.¹¹

A major underpinning of this approach is the observation that the construction of race in this country focuses on dichotomies. Race has been constructed as a relationship in which different groups are defined against one another.¹² Whiteness becomes the “positive mirror image to the explicit negative identities imposed upon non-Whites.”¹³ It becomes the “linchpin for the systems of racial meaning [and] . . . the norm around which other races are constructed.”¹⁴

For Critical Race theorists, the focus is consequently upon “how law was a constitutive element of race itself; in other words how law *constructed* race.”¹⁵ According to CRT, racial power is

the sum total of the pervasive ways in which law shapes and is shaped by “race relations” across the social plane. Laws produced racial power not simply through narrowing the scope of, say, anti-discrimination remedies, nor through racially-biased decision-making, but instead, through myriad legal rules, many of them having nothing to do with rules against

9. This is in contrast to a notion of racial “essentialism,” which is the belief that there is a monolithic racial experience. See Harris, *Race and Essentialism*, *supra* note 1. The result of essentialism is to “reduce the lives of people who experience multiple forms of oppression to addition problems” and to “fragment experience into separate slices of lives.” *Id.* at 588. Harris notes in a related context that feminist essentialism paves the way for unconscious racism since the “essentialist woman” turns out to be white. *Id.* at 588-89.

10. Lee, *supra* note 1, at 758.

11. *Id.* at 751.

12. Lopez, *supra* note 1, at 165-67. According to Lopez, the construction of race is the construction of relationships. The relationship context creates a dualism—Whites or nonwhites—and allows races to be defined against one another by reference to what other races are and are not. *Id.* at 165-67.

13. *Id.* at 167.

14. *Id.* at 187.

15. Crenshaw et al., *Introduction*, in *Critical Race Theory*, *supra* note 1, at xxv.

discrimination, that continued to reproduce the structures and practices of racial domination.¹⁶

Although race is socially constructed and not an immutable biological characteristic, the effect of the phenomenon of race is nonetheless real.¹⁷ Moreover, the construction of racial identity is more than simply a group reaction to being "raced." As the construction of race itself is culturally and politically driven, so too is the creation of racial identity. The racial identity of peoples of color is formed in great measure as a reaction to the dominant group's construction of race and the effect of that domination upon the subordinated group.¹⁸ As such, racial identity has, at its core, a political character. That is, it is less a description of who one is and more a delineation of where one stands.¹⁹ The focus, then, of "identity politics" should be more on the content of the politics and less on the definition of identity.²⁰ The task of constructing racial identity for people of color must be a means to bring

16. *Id.*

17. "[T]here is a material dimension and weight to the experience of being 'raced' in American society, a materiality that in significant ways has been produced and sustained by law." *Id.* at xxvi. Indeed, at the least sophisticated level of indicator—mere skin shade—research in Los Angeles has indicated that being born dark-skinned reduced the odds of working by 52%; 27% of dark-skinned Black men were unemployed, as compared with 20% of light-skinned Black men and 8.6% of white men; 19.4% of Black men with 13 or more years of schooling were unemployed, as compared with 10.3% of light-skinned Black men and 9.5% for white men; for men with less than twelve years of schooling, 61% of dark-skinned, 50% of light-skinned, and 18.6% of white men were unemployed. James H. Johnson, Jr. & Walter C. Farrell, Jr., *Race Still Matters*, *The Chronicle of Higher Education*, July 7, 1995, at A48.

Jayne Chong-Soon Lee also points out that theories that reduce racial identities to ethnic ones fail to account for the centrality of race in the histories of oppressed people, underestimate the degree to which traditional notions of race have shaped society, and may actually hinder the ability to resist entrenched forms of racism. Lee, *supra* note 1, at 771.

18. See *infra* notes 32–51 and accompanying text.

19. For purposes of this Article, I subsume antisubordination ideology under the broad umbrella of "politics." Indeed, an ideological framework influences one's political stances and since ideology is expressed in political terms, I have combined the two concepts for the sake of simplicity. In fact, I believe that the discovery and refinement of one's ideology is better done in the context of concrete political issues rather than in the abstractions of discussions about worldview.

20. See Lee, *supra* note 1, at 770. Lee argues that by replacing racial reasoning with moral and political reasoning, "we can start to move from a racial identity that is premised on our biology and racial essence to one that is based on our political stances." *Id.*

power to the disenfranchised, offer economic dignity to the poor, and give voice to the silenced. The political character of racial identity is, in part, a particular group's historically-situated reaction and opposition to white supremacist ideology and domination.²¹

But perhaps more fundamentally, the construction of racial identity continues to invoke a common political understanding of the need to organize around common interests. In essence, the recognition and proclamation of racial identity—at least in the contemporary context of Asian Americans—was originally a means to a political end and not the end itself. Asian American “identity” was not meant to be a synonym for “heritage.” It was a means to identify with others who shared the experience of subordination. Understanding and proclaiming one's heritage was a necessary, but not sufficient, condition for building one's racial identity.

In the introduction to their book *Critical Race Theory*, the editors, all major CRT scholars, articulate the notion that one of the areas of contemporary politics in which CRT might be influential “is the struggle within communities of color over the future direction of antiracist politics.”²² They rightly criticize the elevation of “racialism,” an essentialist vision of group identity. This vision leads to a vulgar “representational politics” in which the experience of one may be considered representative of the experience of the group.²³ While there is a multiplicity of experience among all people, even those sharing ethnic, racial, or gender traits, I contend that there also must be a

21. See Gotanda, *A Critique*, *supra* note 1. Gotanda considers the treatment of race in a number of ways: status-race (inferior status of Blacks was accepted legal standard); formal-race (race as “neutral” attribute unconnected to social status or historical experience); historical-race (racial categories describe “reified systemic subordination” and relations of unequal power); culture-race (all aspects of culture, community, and consciousness—the link between cultural practices and subordination). *Id.* See also Coombs, *supra* note 1, at 222. Coombs interprets Gotanda as suggesting race is something more akin to culture or to a shared experience of racial oppression. *Id.* at 219–20. She notes that for some, racial identification is not “a set of shared physical characteristics,” but the “shared experience of being visually or cognitively identified as black by a white racist society and the punitive and damaging effects of that identification.” *Id.* at 226 n.18 (quoting Adrian Piper, *Passing for White, Passing for Black*, 58 *Transition* 30, 31 (1992)). Coombs sees Scales-Trent advocating for conceptions of racial identity as a common culture or cultural phenomenon. Thus, blackness is defined as the experience of racial subordination, knowledge of African American culture, commitment to community, and loyalty to essential credos. *Id.* at 227.

22. Crenshaw et al., *Introduction*, in *Critical Race Theory*, *supra* note 1, at xxx.

23. *Id.* at xxxi.

coherent and "essential" *political* viewpoint for peoples of color. This political "essentialism" is a notion distinct from the authenticity of racial experience.²⁴ In the search for an analytic framework that adequately takes account of the varying intersections of our individual and group makeup, *all* experiences and points of view are authentic, and in that narrow sense, racially legitimate. However, the focus on *authenticity* may blur the difference between what is "authentic" and what, in the end, is "authentically" beneficial in political terms for people of color. Clarence Thomas's claim to racial authenticity is an example of how depoliticized the discussion of what constitutes racial identity has become.²⁵

Indeed, the critique of essentialism—ironically in concert with essentialism itself—may be indirectly responsible for the difficulties encountered when people of color act politically cohesively. The critique too often focuses attention on categories of difference and descriptions of unique circumstances rather than concentrating on a search for political commonality. American racial identity, at least for Asian Pacific Americans, lies in the collective resistance and reaction to white society's similar racialization of distinctive Asian nationalities. Moreover, Asian Pacific American identity has been most clearly expressed in the means by which we have organized ourselves to respond to the attempt to subordinate us. In short, political resistance to racial oppression is the content of racial identity, and progressive people of color must reclaim the terms of the debate about what constitutes it. Unless people of color unite to defeat its many manifestations, the "simple" bipolarity of dominance and subordination will prevail irrespective of sophisticated analytical attempts to define and delineate the multiple aspects of our individual identities.

24. It is also distinct from what has been articulated as "strategic essentialism." See Lowe, *infra* notes 51-54 and accompanying text.

25. Crenshaw et al., *Introduction*, in *Critical Race Theory*, *supra* note 1, at xxxi (The editors use Thomas to illustrate the consequences of a "vulgar racialism"—racial identity solely based upon superficial racial characteristics.); see also A. Leon Higginbotham, *Justice Clarence Thomas in Retrospect*, 45 *Hastings L.J.* 1405 (1994) (noting that Thomas votes consistently "against the best interests of the African American community reveals a great deal about his sense of racial identity"); Lee, *supra* note 1, at 769 ("[W]hen racial identity is defined politically, as a firm commitment to antiracist struggles, Justice Thomas's claim to racial authenticity founders.").

B. The Historical Roots of the Construction of Asian American Identity

There is no common American "Asian" culture *per se*. The American commonality of Asian Pacific Americans lies in the similar dangers to which they have all been exposed irrespective of ethnicity.²⁶ The strands of disparate Asian roots have been woven into the fabric of white supremacist stereotypes of Asians that are not particular to any Asian group, but cross ethnic lines.²⁷ Moreover, Asian Pacific Americans have been taught about how to defend ourselves as a racialized minority by the experience of other racialized people, particularly that of the African American community.²⁸ The construction of an Asian Pacific American racialized identity adopted much from the struggles, lessons,

26. See Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed With O.J.*, 6 Hastings Women's L.J. 165, 172 (1995) ("[R]acial representations of Asian Americans, which range from ignorant and insensitive remarks to stereotypical portrayals of Asians, have the deleterious effect of lumping all Asians together as a group of people with similar characteristics, which in turn de-individualizes both Asians and Asian Americans.").

27. *Id.* at 172-73. Asians, no matter how many generations in America, have historically been treated and assumed to be foreign and unassimilable. Even the famous dissent by Justice John Harlan in *Plessy v. Ferguson*, in which he posits a "colorblind" Constitution, removes "Chinamen" from the ambit of constitutional protection. 163 U.S. 537 (1896). For a comprehensive treatment of Harlan's *Plessy* dissent in the context of his anti-Chinese jurisprudence in the body of his work, see Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 Iowa L. Rev. 151 (1997). The effect of stereotypes that have plagued Asian Americans historically revolves around an anti-Asian sentiment that expresses itself at its most extreme by racist nativistic violence directed toward Asians irrespective of nationality and particularly in times of economic hardship or war. For a description of the historical treatment of Asians, including the racial implications of the Asian "model minority myth," see Chang, *End of Innocence*, *supra* note 1. See also Lee, *supra* note 26, at 171-81 (describing stereotypical racial representations of Asians). For a brief exploration of racial discrimination suffered by Asian Pacific Americans, including a critical look at the model minority stereotype, see Gabriel Chin et al., *Beyond Self Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action 13-23* (1996) [hereinafter Chin et al., *Beyond Self Interest*].

28. While definitions are arbitrary and often either over- or underinclusive, for the sake of simplicity, the term "Asian American" or "Asian Pacific American" refers to persons of Asian or Pacific Islander descent who live in the United States irrespective of their original place of birth. The term "African American" or "Black" refers to persons whose ancestry traces back to Africa—although there is some anthropological evidence that all of us may trace our ancestry back to Africa. "Latino/a" refers to persons who trace their ancestry back to Spanish-speaking Latin America.

and wisdom of the African American community's survival.²⁹ In fact, the construction of Asian American identity was itself only a byproduct of political organizing in the late sixties and early seventies around larger issues such as opposition to the Vietnam War or localized community struggles.³⁰

Glenn Omatsu, an early activist and now a staff member of the UCLA Asian American Studies Center, tells of attending an Asian American Studies class at UCLA. He describes how the professor had attributed the rise of Asian American racial consciousness to the efforts to secure civil rights during the 1960s and 1970s. Omatsu goes on:

Young Asian Americans, the professor stated, were swept into this campaign and by later anti-war protests to assert their own racial identity. The most important influence on Asian Americans during this period was Dr. Martin Luther King, Jr., who inspired them to demand access to policymakers and initiate advocacy programs for their own communities. Meanwhile, students and professors fought to legitimize Asian American Studies in college curricula and for representation of Asians in American society. The lecture was cogent, tightly organized, and well-received by the audience of students—many of them new immigrants and children of new immigrants. There was only one problem: the reinterpretation [of the context for the rise of Asian American racial consciousness] was wrong on every aspect.

Those who took part in the mass struggles of the 1960s and early 1970s will know that the birth of the Asian American movement coincided not with the initial campaign for civil rights but with the later demand for black liberation; that the leading influence was not Martin Luther King, Jr., but Malcolm X; that the focus of a generation of Asian American activists was not on asserting racial pride but reclaiming a tradition of militant struggle by earlier generations; that the movement was not centered on the aura of racial identity but embraced fundamental questions of oppression and power; that the movement consisted of not only college students but large numbers of community forces, including the elderly, workers, and high school youth; and that the main thrust was not one of seeking legitimacy and

29. See *infra* notes 32–40 and accompanying text.

30. *Id.*

representation with American society but the larger goal of liberation.³¹

What is striking about Omatsu's description of the context of Asian American identity formation is that its beginnings had as the primary motivation a political direction distinct from an ethnic identity focus.³² That is, at its inception, the notion of Asian American identity was seen as a means of organizing other Asians for a larger political end rather than an end in itself.

For example, Asian American organizing of opposition to the Vietnam War among other Asians crystallized around identification of the racial implications of the war—particularly when traditional antiwar

31. Glenn Omatsu, *The Four Prisons and the Movements of Liberation: Asian American Activism from the 1960s to the 1990s*, in *The State of Asian America* 19, 20-21 (Karin Aguilar-San Juan ed., 1994). Omatsu speaks from firsthand experience. I recall his political and community work in San Francisco's "J-Town" (Japantown) and with other activists from Chinatown in the early 1970s.

The political roots of Asian American identity are also traced by Professor William Wei. See William Wei, *The Asian American Movement* (1993) [hereinafter Wei, AA Movement]. Professor Wei undertakes one of the few looks at the national historical beginnings of the Asian American Movement of the late 1960s and early 1970s and its effect on the construction of Asian American identity. My own personal recollections of some of the events he describes differ somewhat. For example, I recall the divergence of I Wor Kuen (IWK) and Asian Americans for Action (Triple A) as difficult at times, but not as acrimonious as Wei suggests; indeed, several of those who were sympathetic to IWK's formation were also founding members of the United Asian Community Center, along with other Triple A members. In addition, I disagree with what I perceive as Wei's "good guy reformers vs. bad guy revolutionaries" approach. Nevertheless, the book is significant in its scope, intent, and perspective.

32. Wei describes the "Third World strikes" for ethnic studies at San Francisco State University and University of California Berkeley in 1968-1969 and the formations of the Asian American Political Alliances at those campuses, the formations of the Asian Community Center and later Wei Min She, the Red Guard and later I Wor Kuen in San Francisco Chinatown, the struggle to save the International Hotel in San Francisco, the creation of Asian Americans for Action, Asian Americans for a Fair Media, and Basement Workshop in New York City. For a description of these and other organizations see Wei, AA Movement, *supra* note 31, at 11-71.

In addition, I recall the Japanese American Community Services, Asian American Hardcore, the Yellow Brotherhood, Gidra newspaper in Los Angeles, the creations of Asian Women United and the Organization of Asian Women in New York, and the Detroit Asian Political Alliance. I also recall significant early Asian American organizations in Stockton and Sacramento, California, as well as Philadelphia, Pennsylvania.

organizations were unwilling to address those issues.³³ Other early Asian American community activists identified with the call of the Black Power movement's focus on social justice and community empowerment and began "serve the people" programs in Chinatowns, J-towns (Japantowns), and Manilatowns modeled on the Black Panther Party's community programs.³⁴ Early activity also focused around labor organizing, health education, and housing.³⁵

This focus was directly affected by one of the major political influences of the nascent Asian American Movement: the Black liberation movement, including Black nationalism. For the Black liberation movement of the 1960s and early 1970s "racial domination [was] located in the power relations between black and white communities in the exteriors of social life rather than in the interiors of consciousness."³⁶ The way to eradicate racial domination was neither through social intercourse nor education, but through the direct

33. *Id.* at 39-40.

34. *Id.* at 208-17. Professor Wei locates the "serve the people" programs in another context—traditional social service agencies such as the Chinatown Planning Council in New York City. However, my recollection is that the "serve the people" concept was originally, directly, and self-consciously linked to the programs of the Black Panther Party, the Young Lords Organization, and the People's Republic of China.

35. *Id.* In my experience, many discussions of Asian American identity tend to gloss over the fact that early community organizers, particularly those working in Chinatown and working with the Filipino community, dealt with how to address issues such as immigrants and immigration, communication between the foreign-born and the American-born, anti-communism, sweatshop organizing in the face of hostile management and unions, traditional antipathy of different Asian groups toward each other, and international issues.

36. Gary Peller, *Race Consciousness*, in *Critical Race Theory*, *supra* note 1, at 143-44. I must note here that I implicitly (and inaccurately) squeeze organizations like the Black Panther Party (BPP) under a "nationalist" umbrella. In fact, one of the true hallmarks of the BPP was its internationalist outlook and its attempt to translate the experience of socialist and other revolutionary movements into an American ideology irrespective of nationality or race. For many young Asian Americans, it was the BPP rather than the more strict Black nationalists that served as the role model. For example, I Wor Kuen modeled its newspaper and community/political program after the model of the Black Panthers and Young Lords. See Wei, *AA Movement*, *supra* note 31, at 213.

Peller traces the history of the Black Nationalist movement's influence on race discourse. Group identity for the nationalists was a "voluntary willed association." Peller, *supra*, at 138. For nationalists, race was an organizing basis for group-consciousness and located differences between races in social history and "dissimilar conditions of life" in which "cohesive identity was achieved in the course of centuries of struggle against enslavement, cultural alienation, and the spiritual cannibalism of white racism." *Id.* at 137-38 (quoting Dr. C. Mumford).

transformation of power relationships between blacks and whites.³⁷ Group solidarity was a mechanism to change power relationships, and the agenda included community economic power, governmental reparations, and community control of institutions such as police and schools.³⁸

Pan-Asian American identification, thus, was constructed less as an expression of ethnic self-awareness than as a mechanism to organize Asians to address immediate as well as long-term political issues.³⁹ Thus, ethnic identity was only one point of commonality—one of a number of bases of unity—among many others. For example, the power of the early organizing for Asian Americans lay in the realization that the racism inherent in the government's conduct of the war in Vietnam was reflected domestically within the different communities of Asian Americans. It was the recognition of this dynamic that marked the beginning of Asian American identity.⁴⁰

37. Peller, *supra* note 36, at 143-44.

38. *Id.* at 145.

39. This is not to minimize the profound effects of Asian American consciousness and the racial and ethnic awakening that resulted from Asians organizing around political and community issues. "[A]sian American consciousness was accompanied by a struggle to regain history, a struggle to tell our own stories, and to articulate our claim to rights in America. Through this process we have become, and are becoming, Asian Americans. This process is ongoing." Chang, *End of Innocence*, *supra* note 1, at 689. What I am suggesting is that one better sees and understands the effects of white supremacy, as well as homophobia, sexism, and other chauvinisms, upon one's self and one's people when it is understood in the larger context of its effects on society as a whole and when fought through concrete issues that affect the greater masses of people.

Among the many Asian American grassroots groups that organize Asians around larger political issues are the Committee Against Anti-Asian Violence (CAAV), which addresses police brutality, racial violence, labor and refugee rights, and low-income community issues, and the Chinese Staff and Workers Association (CSWA), which organizes workers in the restaurant, construction, and garment industries.

40. Indeed, international events and movements other than the Vietnam War helped spur the development of a political Asian American consciousness and identity that included identification with the emerging influence of the People's Republic of China, martial law in the Philippines, protest against security treaties between the United States and Japan, and the emergence of socialist countries and movements in Asia, Africa, and Latin America.

Omatsu traces the beginning of Asian American consciousness to the late 1960s, when Asian American activists attempted to involve people in the process of social change—confronting institutions of power and creating alternative visions based on these kinds of struggles. Omatsu, *supra* note 31, at 31.

Omatsu cautions those of us who are academics that it is important that we focus not only on raising consciousness in the context of "study groups" but also within

C. Recent Approaches to Asian American Identity

There have been a number of recent approaches to the notion of incorporating an explicit political component into racial identity.⁴¹ Professor Robert Chang has suggested a movement away from essentialized identities and toward "subject positions."⁴² He advocates replacing "Asian American identity" with a larger political framework of a "people of color" racial identity.⁴³

the process of "involving people in the process of social change." *Id.* Indeed, Russell Leong's explicit advice (and warning) to academics is particularly apt:

[We] must analyze the contradictions in our class analysis of others and own positioning in doing any theoretical work—be it around race relations, labor, class, literature or sexuality and gender.

But the key word here is the work that needs to be done beyond articulation and analysis: that is, in assisting local struggles and international movements for social equality, political justice and cultural emancipation wherever they occur. Only through such hands-on work will we be able to humanize theory, and to bring a more committed theoretical dimension to our lives.

Russell Leong, *Lived Theory (Notes on the Run)*, in *Thinking Theory in Asian American Studies*, 21 *Amerasia Journal* v, x (Michael Omi & Dana Takagi eds., 1995).

41. Robert Chang has pointed out that there is a "need to understand that identity is political, not essential." See his remarks in Paul Butler et al., *Conference: Race, Law, and Justice: The Rehnquist Court and the American Dilemma*, 45 *Am. U. L. Rev.* 567, 627 (Feb. 1996). Identity alone, with its "essentialist moorings," is inadequate for political growth. Chang, *End of Innocence*, *supra* note 1, at 690. For Chang, "coalitional politics, growing out of identity-based, interest-group politics, is an expansive form of identity politics. . . . Coalitions form and dissipate depending on political exigencies." *Id.*

42. Chang defines "subject position" as part of a complex of social relations or social position and that each social agent is "the locus of many subject positions." *Id.* at 690-91 (quoting Chantal Mouffe). Chang makes the point that "to say that you are a person of color becomes a political statement, a political act." *Id.* at 692. He articulates a number of possible political commitments that might help define the political content of racial identity, including antisubordination; political, economic, and cultural empowerment; uncompromising opposition to hetero-patriarchy; reconstructing the meaning and language of race; self-critical/self-reflective approach; learning and openness to our histories; insistent commitment and identification with a subordinated race; weak link theory of social change; egalitarian deliberative participatory democracy; willingness to sacrifice and struggle; contextualized judgment and responsibility; and willingness to be disciplined as a group. *Id.* at 692 n.22.

43. *Id.* at 692-93. According to Professor Chang, a "person of color" is an identity coming with certain political commitments such as antisubordination, political, economic, and cultural empowerment, and uncompromising opposition to hetero-patriarchy. *Id.* at

The problem with this conception is that an elimination of specific racial moorings and identities need not be a consequence of a political framework for viewing racial identity. It may not even reflect the reality of how the vast majority of the population of people of color see themselves. While race may be a construction, racial identity is not solely a product of cognitive and rational understanding.

As Ian Lopez puts it, "[r]ace is only an idea, but it is an implacable one whose material effects pervade and predominate all social relationships."⁴⁴ Indeed, racial identity on broad "people of color" grounds alone may be impossible if racial identification is constructed as "culture-race,"⁴⁵ or "shared experience,"⁴⁶ or "dissimilar conditions of life."⁴⁷ Even from a day-to-day organizing standpoint, the ability to bridge across racial lines cannot be done simply because academics redefine what race is. If this new construction is still outside of people's daily lived experience, including that of people of color, it cannot succeed.

691 n.22.

44. Lopez, *supra* note 1, at 169.

45. See Gotanda, *A Critique*, *supra* note 1, at 56 ("Culture-race includes all aspects of culture, community, and consciousness. The term includes, for example, the customs, beliefs, and intellectual and artistic traditions of Black America, and institutions such as Black churches and colleges.").

46. See Coombs, *supra* note 1, at 225-26. Coombs suggests that if race is seen as a cultural phenomenon then experiences of racial subordination, of culture, and of commitment to community may figure primarily in determining race. *Id.* at 226.

An article in the New York Times describes an emerging racial consciousness giving birth to pan-Asian clubs particularly in Queens, lower Manhattan, Los Angeles, and San Francisco. It reports that at the University of California and at Ivy League colleges, Asian-American clubs are increasingly organized around race rather than ethnicity. While most recent immigrants in Queens, New York remain divided by ethnicity and nationality, "the older immigrants and their children mix and identify racially with one another." Norimitsu Onishi, *New Sense of Race Arises Among Asian-Americans*, N.Y. Times, May 30, 1996, at A1. A similar phenomenon has been reported among Latinos in certain sections of Queens where different Spanish-speaking cultures intermingle. A Latino sociology professor is quoted as saying the residents "are creating a true American culture, with ingredients from everywhere in Latin America and a large dose of elements from the United States. . . . They have shed some of their national quirks to come together under a Hispanic banner." Mirta Ojito, *More Spanish Accents, But Fewer Are Cuban*, N.Y. Times, Jan. 29, 1997, at B1.

47. See Peller, *supra* note 36, at 138 ("The depth of identification of self and recognition of others implicit in the idea of nationhood based on generations of 'dissimilar conditions of life' marks a vision of community that cannot be captured in the liberal dichotomies of either liberty/coercion or reason/myth.").

It is only through the dynamic process of effectuating actual political change that people of color can define ourselves more clearly.⁴⁸ But as all who have struggled to hold coalitions together know, "[w]e cannot build coalitions if we have not created safe places for the equally difficult and important work that families do."⁴⁹ The need to build broad identities to encompass broad political ends need not be counterpoised to a sense of unique racial identity; both can serve each other. American society and certainly people of color need a unified community of color as much as a progressive Asian Pacific American identity. Asian Pacific Americans need to help build both.⁵⁰

"Asian American identity" also has been conceptualized as a political unity that enables diverse Asian groups to understand similar unequal circumstances and historical treatment and that empowers the heterogeneous community to confront institutions that marginalize us.⁵¹ "Strategic essentialism" envisions a constructed unity assumed for political reasons for "the purpose of contesting and disrupting discourses that exclude Asian Americans while simultaneously revealing the internal contradictions so as to insure that such essentialisms will not ultimately strengthen the apparatuses that Asians seek to dis-empower."⁵²

48. The pronoun "we" is used to denote either "Asian Pacific American" in a particular sense, and people of color in a more generalized sense since I believe the interests are fundamentally congruent. Indeed, "we" also encompasses the notion of all Americans since the construction of progressive racial identity will have a profound impact upon how we see ourselves as Americans.

49. Lawrence, *Foreword*, *supra* note 1, at 839-40 (1995). Professor Lawrence addresses the issue of multicultural anti-racist struggle as an analog to the struggles against apartheid. He states that using this theory to address interminority conflict will not succeed until the focus is placed upon the eradication of white supremacy. "If our legal system fails to address the emerging problem of interminority group conflict, it is because it has failed to address the continuing legacy of American apartheid." *Id.* at 826.

50. Professor Chang recognizes the inherent difficulty of coalitional politics based solely on essentialized identity politics. *See* Chang, *End of Innocence*, *supra* note 1, at 690. However, when there is unity about the politics inherent in racial identity, then coalitional unity is based upon more than just essentialized concerns. That is, splits that may occur around immigration or affirmative action will reflect a differing political analysis of how to eradicate white supremacist ideology and its effects—the real "interest" of us all in the long term. On that basis the division will not be on solely racial grounds.

51. Lowe, *Heterogeneity*, *supra* note 1, at 30.

52. *Id.* at 39.

While this view accurately acknowledges that gender, class, sexual orientation, and other differences will enhance Asian American unity with other groups, the commonality still stems from self-identity, not political identity.⁵³ However, the purpose of Asian heterogeneity must be more than the "empowerment" of the community to engage institutions that marginalize us. Such a purpose alone is inadequate because it fundamentally begs the question of what the goal of the "empowerment" is.⁵⁴

This distinction may be illustrated in the protest against the Broadway production of *Miss Saigon*. During the production of the musical, a controversy arose around two major issues: (1) the casting of white actors playing Asian characters and (2) the play's perpetuation of common Asian stereotypes (Asian women as prostitutes, Asian men as faceless subhumans).⁵⁵ However, there was a political disjunction in the focus of the protest against the play. Some protested the perpetuation of stereotypes within the piece, suggesting that plays such

53. According to Lowe, since the most exclusive construction of Asian American identity presumes masculinity, American birth, and speaking English, this construction is at odds with forming political alliances across other lines and thus, the acknowledgment of gender and class differences among Asian Americans strengthens our ability to affiliate with other groups. *Id.* at 31. Thus, the freedom "to explore the hybridities is permitted by the context of a strongly articulated essentialist politics." *Id.* at 39. A politics based exclusively on ethnic identity "accepts the terms of the dominant logic that organizes the heterogeneous picture of racial and ethnic diversity into a binary schema of 'one' and 'the other.'" *Id.* at 30. Moreover, it risks underestimating differences, inadvertently supporting the racist discourse that we are all alike. *Id.*

In another context, Lowe also emphasizes the dangers of ignoring the tension and conflicts among ethnic and racial groups since through the exploration of the contradictions, "we begin to address the systemic inequalities built into cultural institutions, economies, geographies . . ." Lisa Lowe, *Imagining Los Angeles in the Production of Multiculturalism*, in *Mapping Multiculturalism* 413, 421 (Avery F. Gordon & Christopher Newfield eds., 1996).

54. Lowe describes how the need to protect immigrant communities has generated projects that "exemplify how theory and practice are synthesized in work that is both activist and intellectual." Lisa Lowe, *On Contemporary Asian American Politics*, 21 *Amerasia Journal* 41, 47-48 (1995) [hereinafter Lowe, *On Contemporary*]. New projects concretely addressing the political realities of Asian immigrant communities also take on "the difficult work of forging understanding and political understanding between very heterogeneous Asian and non-Asian groups." *Id.* at 48 (describing how the organizing of Asian immigrant women to assist in documenting exploitative working conditions in certain San Diego industries created solidarity with female Mexican workers).

55. *Miss Saigon* is an adaptation, set in Vietnam during the Vietnam War, of Puccini's opera *Madama Butterfly*.

as this were racially offensive and inappropriate for production.⁵⁶ Others protested by taking the position that there should have been more Asian actors in more meaningful roles in the play, suggesting that the stereotypical characters were not an issue so long as Asians played them.⁵⁷ While the issue of equal employment for Asian actors is not separate from the dearth of non-stereotypical roles, the immediate goals of the "empowered" heterogeneous Asian Pacific American community protesting *Miss Saigon* in a real sense were fundamentally at odds.

Both Chang and Lowe instruct us that identity is rooted in politics, and articulate the foundational notion that racial solidarity "is

56. For a description of the events surrounding the protests and of the leadership role that gay and lesbian Asian Americans played in articulating this view, see Yoko Yoshikawa, *The Heat Is On Miss Saigon Coalition*, in *The State of Asian America* 275 (1994).

57. This was the position originally held by Actors' Equity after protests by the playwright David Henry Hwang and actor B.D. Wong (Actors' Equity later reversed its position). See, e.g., Shirley Sun, *Why the Furor Over Miss Saigon Won't Fade: For Asians Denied Asian Roles, 'Artistic Freedom' Is No Comfort*, N.Y. Times, Aug. 26, 1990, at B7; Alex Wichel, *Union Weighs Miss Saigon Casting*, N.Y. Times, July 25, 1990, at C12. Hwang and Wong were subsequently honored by the Association of Asian Pacific American Artists for raising the casting issue. See David J. Fox, *Kurosawa Cited For Career Achievement, Awards: An Actor and Playwright Who Raised Issue of Discrimination in Casting Also Will Be Honored By Asian Pacific American Artists Association*, L.A. Times, Mar. 18, 1991, at F2. For another description of events surrounding *Miss Saigon*, see Wei, *AA Movement*, *supra* note 31, at 52-54.

Neil Gotanda discusses *Miss Saigon* in the context of how racism affects Asian Americans—how the model minority image "carries an implied racial context of racial stratification and that there are distinct ideological messages implicit within the model minority image and racial stratification." Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in *Asian Americans and the Supreme Court* 1087, 1088 (Hyung-Chan Kim ed., 1992). The ideological message is articulated as follows:

Under the model of racial stratification . . . the economic disparities between Black and White . . . do not appear to be a genuine social problem. The presence of more successful Asian Americans and Latinos, located between Whites and African Americans, proves that the social and economic barriers can be overcome and are not rooted in "race." Thus racial stratification serves to justify and legitimate existing racial disparities.

Id. at 1091. For further discussion of the use of multiracialism in the context of a new American racial hierarchy, see Chris K. Iijima, *Political Accommodation and The Ideology of the "Model Minority": Building a Bridge To White Minority Rule in the 21st Century*, S. Cal. Interdisciplinary L.J. (forthcoming).

the product of [political, moral and ethical] struggle."⁵⁸ However, racial solidarity must be created not only between and among races, but within races as well. Racial solidarity is also a product of political and moral struggle. It is not a struggle simply over ideas in the abstract. Affecting masses of people, it is a struggle that occurs over concrete political tasks and issues. The progressive power of racial solidarity is not rooted in similarity of phenotype, but in shared political agenda. It is no accident that the first stirrings of Asian American identity were in the context of protests against other Asians. The immediate objects of early self-conscious Asian American protest and thus the unity of early Asian American activists was based less around ethnic and racial background than common political goals and worldview.⁵⁹

Omatsu describes a major difference in the focus of Asian American political organizing as the years progressed. He notes that the early focus of Asian American community activists was on the disenfranchised of the community—youth, addicts, prisoners, tenants, and low-income workers. More recent "identity politics" focuses on the "empowerment" of young Asian American professionals. The results of this change in focus and the subsequent entrance of Asian American neoconservatives into "identity politics," according to Omatsu, "helps explain the political ambiguity of Asian American empowerment in the late 1980s."⁶⁰ The notion of Asian American identity has moved from an expressly progressive political framework into one based upon perceived ethnic and racial commonalities. If that understanding remains the content of Asian Pacific American identity politics, then it cannot

58. Chang, *End of Innocence*, *supra* note 1, at 692 (quoting Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741, 784 (1994)); see also Lowe, *On Contemporary*, *supra* note 54.

59. In fact, I recall early Asian American activists were often criticized by conservatives in their respective Asian American communities for "rocking the boat," for "embarrassing the community," and, of course, for "being communists." Early objects of Asian Pacific American protests were the Six Companies in Chinatown, the president of San Francisco State University, S.I. Hayakawa, and the Japanese American Citizens League. See Wei, *AA Movement*, *supra* note 31. I recall that one of the most profound moments of Asian American consciousness raising was at the national convention of the Japanese American Citizen's League in Chicago in 1970 where a group of Asian American activists from both the East and West Coasts met to plan a demonstration against the conservative forces in the JACL and to "convince" the organization to oppose the Vietnam War. For a similar perspective on that convention, see William Minoru Hohri, *Repairing America: An Account of the Movement for Japanese-American Redress* 37-38 (1988).

60. Omatsu, *supra* note 31, at 40-42.

coherently address concrete contemporary political issues such as affirmative action or welfare and immigration reform. This incoherence arises in part because ethnic commonalities among Asian Pacific Americans by themselves seem so difficult to articulate.⁶¹ The direction to follow in the reconstruction of Asian Pacific American identity is best expressed by Omatsu, who admonishes that Asian Pacific American identity must continue to be built within the context of broad political analysis:

Thus, as we approach the end of the twentieth century, activists are confronted with a task similar to that confronting activists in the late 1960s: the need to redefine the Asian American experience. And as an earlier generation discovered, redefining means more than ethnic awakening. It means confronting the fundamental questions of power and domination in U.S. society.⁶²

The failure to centralize the overarching political context and nature of identity construction can lead and has led to an incoherence in critiques of race definition and race relations. Moreover, the failure to set a progressive political framework for the discussion of racial identity has altered the terms of the debate surrounding race, and has allowed space for neoconservative articulations of race construction to

61. See, e.g., David Mura, *A Shift in Power, A Sea Change in the Arts, in The State of Asian America* 183, 197 (1994) ("What do we [Asian Americans] have in common except for racism and rice?" (quoting Valerie Lee, Director of the Asian American Renaissance Conference, 1992)).

62. Omatsu, *supra* note 31, at 65. It is notable that Michael Omi and Dana Takagi observe:

The waning of radical political movements in the 1980s had attendant effects on theory and politics within Asian American Studies. We feel that the absence of a sustained and coherent radical theory of social transformation led to a retreat to more mainstream, discipline-based paradigmatic orientations. Contributing to this trend was the increasing "professionalization" of the field in academic settings, the demands for tenure and promotion for faculty members, and the entrance of newcomers in the field trained in specific disciplines who had not participated in the new social movements of the previous decades.

Michael Omi & Dana Takagi, *Introduction: Thinking Theory in Asian American Studies*, 21 *Amerasia J.* xi, xiii (1995).

confuse the discussion.⁶³ This confusion is evident in the contemporary critique of the black/white paradigm upon which American racial vocabulary has been largely articulated.

II. THE BLACK/WHITE PARADIGM AND ITS CRITIQUE

The question of whether racial identity contains implicit political identities has become an even more important issue given the changing demographics of American society. Confusion about the content and implications of racial positioning will serve only to reinforce the present racial status quo. In the United States, a bipolar black/white paradigm of race relations has been the framework upon which a vocabulary has been erected to deal with race issues.⁶⁴ As immigration has changed the demographics of American society over the last thirty years, and as African Americans have decreased as a percentage of America's population of color, legal scholars have taken an increasingly critical look at the old black/white paradigm and found it wanting.⁶⁵ In crucial areas—affirmative action, interracial conflict in the inner city, redistricting—the players are not simply black and white but a panoply of races and interests.⁶⁶

63. See, e.g., Jim Chen, *Unloving*, 80 Iowa L. Rev. 145, 155 (1994) (arguing that Asians do not respond monolithically to their common legacy of discrimination). For a discussion of Chen's article see *infra* notes 122-27 and accompanying text.

64. More particularly, race has been constructed as a black/white paradigm in which race is analyzed solely as an operation of either blackness or whiteness. See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Cal. L. Rev. 1241, 1265-67 (1993) [hereinafter Chang, *Legal Scholarship*]. It is interesting to note that even mainstream popular publications criticize the "binary approach to race" as being "no longer relevant to the nation's changing demographics." Tom Morganthau, *What Color Is Black?*, Newsweek, Feb. 13, 1995, at 62. Adrienne Davis traces the paradigm to the case of *Hudgins v. Wright*, in which women claimed being of free Native American ancestry rather than of Black ancestry, and thus brought suit against being owned as slaves. 11 Va. (Hen. & M.) 134 (1806). See Davis, *supra* note 1, at 615; see also Coombs, *supra* note 1, at 225.

65. See Almaguer, *supra* note 1, at 2; Chang, *Legal Scholarship*, *supra* note 64, at 1265-68; Frank Wu, *Neither Black nor White*, *supra* note 1, at 248; see also Morganthau, *supra* note 64, at 62 (commenting that the "binary approach toward race is no longer relevant to the nation's changing demographics—immigrants and multiracials"); Stanley Crouch, *Race Is Over*, N.Y. Times Magazine, Sept. 9, 1996, at 170 (discussing the increasing influence of mixed race and culture in contemporary American society).

66. Alexandra Natapoff, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, 47 Stan. L. Rev. 1059 (1995).

Many scholars of color criticize the old paradigm because it cannot adequately account for the "new" players in the scenario.⁶⁷ Critics of the old paradigm note that it cannot even adequately consider class, gender, or any other identity that intersects with race. In fact, some say it fails in fundamental ways to address the growing phenomenon of multiracial identities.⁶⁸

Yet the process of deconstructing the old black/white paradigm carries with it new dangers. Although narrowly constructed, it has had real value for those wishing to raise issues of white supremacy and the subordination of people of color. The original paradigm, while constructing and reaffirming white dominance, also permitted a useful counter-focus on the effect and operation of white supremacy. While progressive scholars and activists agree that the black/white paradigm must be dismantled to make room for more sophisticated and nuanced models, the focus on the effects of white supremacist ideology must remain at the core of the analysis. Academics and legal scholars, as well as popular media, are addressing the issue of whether the traditional bipolar black/white paradigm of race relations is a coherent framework.⁶⁹

American society has never been strictly black and white. Indeed, the "multiracialness" of America is no new phenomenon. "Black" has, in fact, long been a multiracial, multi-hued color.⁷⁰

Even on its own terms, race has never been a black and white matter. There have always been as many shades of black and brown as there have been individuals who identified themselves or were identified by others, by that concept. There have always been Native Americans, Chicanos, and Asian immigrants. In an earlier era, the various white ethnic groups were considered to be distinct races.⁷¹

One of the pernicious effects of the old paradigm has been the creation of an incoherent positioning of racial groups with respect to one another. In Los Angeles, during the uprising after the Rodney King

67. See *supra* note 1 and accompanying text.

68. See Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 Stan. L. Rev. 957 (1995).

69. For a list of scholars who have addressed this issue see *supra* note 1.

70. It should be noted that the plaintiff in the famous case of *Plessy v. Ferguson* was seven-eighths white by blood. 163 U.S. 537 (1896).

71. Wu, *Neither Black nor White*, *supra* note 1, at 251.

verdict, there was much analysis of the conflict between the Korean American and African American communities that emerged in the disturbance.⁷² It is significant to note that in the construction of the conflict, nativist arguments that Koreans were foreigners and less American positioned African Americans as "white" relative to Asians.⁷³ On the other hand, Korean Americans were also placed within the entrepreneurial American Dream and positioned as white.⁷⁴ This kind of positioning becomes coherent only if the assumptions of the old paradigm and the placement of whiteness within it are accepted as the operating framework.⁷⁵ Moreover, the racialization of identity within this bipolarity submerges class and gender, while essentializing race.⁷⁶

The black/white paradigm has also forced other marginalized groups to distinguish themselves from black people in order to avoid being treated as poorly.⁷⁷

The black white paradigm is an intriguing piece of white supremacy. Although I am black, I will not defend it because black people certainly didn't set up this paradigm. . . . [But] this paradigm has force. Other people of color have tried to argue their differences from black Americans so they won't be treated like black Americans. Legally, it's a perfectly defensible strategy.

72. See, e.g., Ikemoto, *supra* note 1; see also Reginald Leamon Robinson, "The Other Against Itself": *Deconstructing the Violent Discourse Between Korean And African Americans*, 67 S. Cal. L. Rev. 15 (1993).

73. Ikemoto, *supra* note 1, at 1587-91. Ikemoto describes the white supremacist "master narrative" of the conflict between the groups as "Asians are foreign intruders" and "African Americans are Blacks who are criminals and poor." *Id.* at 1582-83.

74. *Id.*

75. *Id.*

76. *Id.* at 1591. In the essentialized race conflict Korean becomes Asian becomes merchant in opposition to constructed Blackness becomes poor becomes criminal, and filters out possible bases of understanding. *Id.* at 1592-93. Indeed, as Lowe pointedly articulates, "[t]hroughout our lived social relations, it is apparent that labor is gendered, sexuality is racialized, and race is class-articulated." Lowe, *On Contemporary*, *supra* note 54, at 46.

77. See Wu, *Neither Black nor White*, *supra* note 1, at 249 ("Racial groups are conceived as white, black, honorary whites, or constructive blacks."); see also *Ozawa v. United States*, 260 U.S. 178 (1922) (definition of "white person" under naturalization statute did not include the Japanese); *People v. Hall*, 4 Cal. 399 (1854) (statute prohibiting "blacks" from testifying against "whites" included Chinese); *Hudgins v. Wright*, 11 Va. (Hen. & M.) 134 (1806) (Native American bringing suit against being owned as a slave on the basis that she was not black).

Unfortunately, in the current political context, it's had some really detrimental effects particularly as far as doing cross-cultural organizing.⁷⁸

The critique of the black/white paradigm has had some ironic effects. To the extent that the paradigm has forced people of color to disassociate from African Americans in a legal context, the modern critique of it has also led to problematic constructions of racial identity which submerge a critical focus on white supremacy.

For example, there is increasing focus on the complex problem of how to classify diverse and complex racial identities and how to negotiate the differences between groups of color. Simultaneously, there is a tendency to lose focus on the endpoint of the classification and the eradication of the root of the differences: white racial privilege and white supremacist ideology.⁷⁹

One critique of the old paradigm constructs race as entirely self-defined. The most obvious example of such an approach is in the recent push for a "multiracial" category in the official U.S. census.⁸⁰ This vision is based on the demographic changes that have affected the focus of race relations: increasing percentages of people of color, increasing numbers of non-black persons of color, increasing numbers of people who consider themselves multiracial.⁸¹ Thus, it searches for a framework for constructing racial identity that includes "other factors that shape

78. See Adrienne Davis, Remarks at the Conference on Color-blindness versus Racial Justice (Sept. 21, 1995), in Paul Butler et al., *Conference: Race, Law and Justice: The Rehnquist Court and the American Dilemma*, 45 Amer. U. L. Rev. 567 (1996).

79. See, e.g., Tanya Hernandez, *Multiracial Category May Address Only Fear*, N.Y. Times, July 15, 1996, at A10 (letter to editor) ("[T]he demand for a multiracial category should be carefully examined in view of the politics of race and the ways in which a separate class can be used as a tool of subordination rather than as a demonstration of respect for the diversity of our nation.").

80. See, e.g., Associated Press, *Rally Seeks To Add Multiracial Category on U.S. Census Forms*, L.A. Times, July 21, 1996, at A4. Of course, the irony of this approach is that it assumes and validates the existing ways that "pure" races have been constructed. See Lopez, *supra* note 1, at 161-62. Recently, a federal task force recommended that an individual of mixed racial parentage be able to self-identify and check off several races simultaneously on federal demographic forms. See Steven A. Holmes, *Panel Balks at Multiracial Census Category*, N.Y. Times, July 9, 1997, at A12 (reporting that while seven states have a multiracial category and nine other states are considering the issue, a federal task force will recommend not to include a multiracial category on federal forms but will recommend the multiple check-off option).

81. See Ramirez, *supra* note 68.

[one's] sense of self."⁸² This new multicultural paradigm rests upon an individual's self-definition. It "rests upon universal principles of individuality, instead of race or ethnicity."⁸³ This self-definition "counters the depersonalizing effects of imposed racial classifications,"⁸⁴ making "color consciousness . . . a matter of individual choice."⁸⁵

However, racial identity is not simply a question of a particular individual's self-definition.⁸⁶ It is a function of being "raced"

82. *Id.* at 975.

83. *Id.* at 986. Ramirez proposes a "multicultural empowerment" as a new paradigm. *Id.* at 960. This new paradigm would "acknowledge the importance of race, yet penetrate beyond race" to identify and incorporate problems that cannot be solved solely through racial preferences. *Id.* According to this vision, multicultural empowerment rectifies a binary remedial system for which it was never designed—"balancing competing claims among people of color and finding a place for multicultural identity within the remedial scheme." *Id.* at 992.

Professor Ramirez makes the important point that something more than racial identification is necessary to unite people of color. Indeed, she poses the fundamental question whether the interests of poor Latinos are any different from those of poor African-Americans or Asian Americans. Deborah Ramirez, *Forging A Latino Identity*, 9 La Raza L.J. 61, 67 (1997). She searches for the model "that allows us to empower ourselves without creating barriers among and between groups." *Id.* I submit that the fundamental interest within, among, and between racial groups is our commitment to the eradication of privilege—race, gender, class, sexual orientation—and that this interest must become a component part of how we define our particular racial identities.

84. Ramirez, *supra* note 68, at 981.

85. *Id.* at 986. In Ramirez's hypothetical admissions plan, race-based questions are replaced by open-ended questions that "enable students to construct their own profile." In this hypothetical, a school may ask if a prospective student is a member of a group that has been historically disadvantaged and whether a student has "actively associated with disadvantaged communities." *Id.* at 979-80. Under this system a "non-Hispanic white whose life had been devoted to advocacy on behalf of Alaskan native tribes" would be evaluated similarly to a "Latino low-income housing advocate or a black community development activist." *Id.* at 980.

86. See Nancy A. Denton, *Racial Identity and Census Categories: Can Incorrect Categories Yield Correct Information?* 15 Law & Ineq. J. 83, 97 (1997) ("Regardless of how truly one is able to express one's personal identity, structural racism in U.S. society will persist in forcing people into one of the five boxes of the racial/ethnic pentagon for the foreseeable future . . ."); see also Frank H. Wu, *From Black to White and Back Again*, 3 Asian L.J. 185, 204-05 (1996) (hereinafter Wu, *From Black to White*) ("Asian Americans may be able to assert that they are not black in order to be accepted as white [but they] should not be so foolish, however, as to believe that they can really exercise their individual decision or even their collective choice.").

independently by the dominant society, and it is also fundamentally an issue of group political empowerment.⁸⁷

Since the construction of race may be viewed as the construction of relationships, the construct creates a dualism: whites or nonwhites.⁸⁸

87. Moreover, in most affirmative action contexts, people of color must rely on predominantly white faculty and administrators who make in a closed and unrepresentative process determinations about which people of color are "worthy" of inclusion for diversity purposes. See Gabriel J. Chin, *Bakke To The Wall: The Crisis of Bakkean Diversity*, 4 Wm. & Mary Bill of Rights J. 881, 934-35 (1996). Indeed, Chin raises the possibility that schools may admit "preferred racial minorities" to the exclusion of those not "preferred." *Id.* at 936. That possibility is why it is crucial that racial diversity and racial identity not be solely defined as an issue of an individual's racial or cultural experience. Given that the actual affirmative action determinations are going to be made by whites, the terms of what constitutes racial identity and therefore, racial diversity, must be more definitively political and grounded in antisubordination principals.

88. Lopez, *supra* note 1, at 165-67. This dualism is present in the construction of other identities as well. David Halperin discusses the dualism inherent in the hetero/homosexual binarism:

The heterosexual/homosexual binarism is itself a homophobic production, just as the man/woman binarism is a sexist production. Each consists of two terms, the first of which is unmarked and unproblematic—it designates the "category to which everyone is assumed to belong" (unless someone is specifically marked as different)—whereas the second term is marked and problematized: it designates a category of persons whom *something differentiates* from normal, unmarked people. The marked (or queer) term ultimately functions not as a means of denominating a real or determinate class of persons but as a means of delimiting and defining—by negation and opposition—the unmarked term. . . . Heterosexuality defines itself without problematizing itself, it elevates itself as a privileged and unmarked term, by abjecting and problematizing homosexuality. Heterosexuality, then, depends on homosexuality to lend it substance—and to enable it to acquire by default its status as a default, as a *lack of difference* or an *absence of abnormality*.

David Halperin, *Saint Foucault: Towards A Gay Hagiography* 44 (1995) (emphasis in original) (footnotes omitted).

There is a danger in conceptualizing race in terms of relationships since it creates an illusion that racial identities possess an internal stability when in actuality racial construction is complex because of the heterogeneity of society. Lopez, *supra* note 1, at 165-66. A binary construction of race distorts the ways in which nonwhite races are racialized against each other and produces "an inherently incoherent system of racial meanings that distorts and hides the underlying heterogenous reality of life in U.S. society." *Id.* at 166-67.

This dualism allows races to be defined against one another.⁸⁹ Whiteness has been defined within this "diacritical system as a positive mirror image to the explicit negative identities imposed upon non-whites."⁹⁰ Thus, "[w]hiteness continues to exist primarily as an identity constructed in opposition to that [identity] imposed upon racial minorities"⁹¹ It exists as the norm around which other races are constructed.⁹²

An analogy might be made to the binary construction of "homosexuality," defined negatively and oppositionally as everything "heterosexuality" is not.⁹³ But the development of "queer politics" has made available a new kind of identity "constituted not substantively but oppositionally, not by what it is but by *where* it is and *how* it operates."⁹⁴

A similar framework always has been at work for people of color. The old black/white paradigm was useful for identity construction and day-to-day political organizing. The paradigm's utility lay in the transformation of the marginality of people of color's existence outside the "norm" into an organizing force to advocate for political positions in opposition to those found in the "normal" discourse.⁹⁵ The old paradigm at least allowed a reverse discourse to develop in which the object to be considered was whiteness and white supremacy from the normative position of color.⁹⁶

89. *Id.*

90. *Id.* at 167.

91. *Id.* at 171.

92. *Id.* at 187. Indeed, its existence depends upon the mythologies that sustain the current racial system, and its maintenance requires the "conceptual existence of Blacks, Latinos, Native Americans, and other races as tropes of inferiority against which Whiteness can be measured and valued. . . . Racial equality may well be impossible until Whiteness is disarmed." *Id.*

93. See Halperin, *supra* note 88, at 44. Lopez similarly notes that "colored" is defined by negation and opposition as everything whiteness is not. See Lopez, *supra* note 1, at 167.

94. Halperin, *supra* note 88, at 61-62.

95. Halperin describes "queer politics" as the ability to define sexual identity "oppositionally and relationally but not necessarily substantively, not as a positivity but a positionality, not as a thing but as a resistance to the norm." *Id.* at 66.

96. Professor Leonard M. Baynes has observed that even if the dominant paradigm is not black/white as a matter of race, the effects of racial subordination occur predominant within a "dark/light" paradigm as a matter of shade even within "non-Black" communities such as Latino. See Leonard M. Baynes, *Even If It Is Not Just Black and White Anymore, Darkness Casts A Longer Discriminatory Shadow than Lightness:*

A. Racial Conflict Among People of Color and Whites As "Victims"

Self-definition cannot resolve conflicts between different people of color because racial conflict is not primarily rooted in how we as individuals see ourselves with respect to race. It is rooted in how groups have been pitted against one another. The resolution of conflict between races can be resolved only when we understand how the ideology of white supremacy has been internalized by all people—particularly people of color. In essence, intergroup conflict can be best understood as the product of internalized white supremacy.⁹⁷ As Charles Lawrence cogently observes:

If our bipolar, black/white model for thinking about racial inequality is dysfunctional in a multiracial society it is because it is a model that never worked in the first place, even when most Americans who were not white were black. The law's prevailing paradigm for achieving racial equality failed us then, and it fails us now, because it is not first about the eradication of white supremacy.⁹⁸

This is especially dangerous for Asian Americans, who have been used as a "buffer" between whites and other subordinated groups.⁹⁹ In this hierarchical structure between different minorities, the African American is not directly judged against white society, but is measured against a "model minority" Asian American. African Americans thus are "monitored" by the Asian American minority against the backdrop of both groups' subordination to the "invisible

An Investigation and Analysis of the Color Hierarchy (manuscript on file with author).

97. Lawrence, *Foreword*, *supra* note 1, at 835 (1995). According to Lawrence, we adopt the belief systems of the dominant white culture. *Id.* at 829. Thus, our task is to "name ourselves (black, Latino/a, Asian, Puerto Rican, Chicano, Japanese, Korean, people of color, African diaspora, pan-Asian, colonized, progressive, antiracist) and give those names meanings that oppose and undermine white supremacy." *Id.* at 839. As Lawrence states, "it is not just blacks who are injured by stereotypes about blacks, but Latinos and Asian and even whites." *Id.* at 827.

98. *Id.* at 826.

99. See Natsu Saito Jenga, *Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity*, 3 UCLA Asian Pac. Am. L.J. 81, 83-84 (1995) (noting how the "model minority" myth places Asian Americans in a racial hierarchy in a "yellow buffer zone" that is "below" European Americans and "above" African Americans and Latino/Latinas).

majority" of whites and their racial privilege.¹⁰⁰ The creation of a tiered rather than a binary construction of racial relationships to subordinate racial groups is further evidence of the danger of rejecting the black/white paradigm without a grounding in antisubordination politics.¹⁰¹ As Gotanda points out:

What should not be forgotten amidst these complexities [issues of group and class privilege among people of color], however, is that interracial and interethnic conflict cannot be divorced from the broader American historical context of racial subordination. One of the historical axes of social subordination in America has been White privilege over African Americans. Even as the possibilities of racial

100. See Neil Gotanda, *Multiculturalism and Racial Stratification*, in Mapping Multiculturalism 238, 240 (Avery F. Gordon & Christopher Newfield eds., 1996) [hereinafter Gotanda, *Multiculturalism*].

101. See Jenga, *supra* note 99, at 84 (observing that Asian Americans can use this "buffer" positioning either to reinforce racial hierarchy or expose and dismantle the hierarchy); see also Wu, *From Black to White*, *supra* note 86, at 208-09 ("Asian Americans become white predominantly for the purpose of attacking affirmative action programs."); Eric K. Yamamoto, *Friend or Foe or Something Else: Social Meanings of Redress and Reparations*, 20 Denv. J. Int'l L. & Pol'y 223, 233 (1992) (posing the question whether reparations for Japanese American internees during World War II "enabled society to feel better about itself without addressing issues of domination and oppression, power and injustice"). John O. Calmore warns that to ignore the fact that the black/white paradigm is a historically racialized framework is to risk "being co-opted or converted into token honorary white people and, as such, buy into an individualist and assimilationist worldview and orientation." John O. Calmore, *Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing To Swim Free,"* 15 Law & Ineq. J. 25, 65 (1997).

Professor Yamamoto has articulated an analytical framework for understanding the operation of dominance and subordination outside the old black/white paradigm without sacrificing the primary focus on white supremacy. See Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 Mich. L. Rev. 821, 891 (1997). According to Professor Yamamoto, situated group power involves four understandings: (1) simultaneity (racial group can be viewed as oppressed and oppressive simultaneously depending on power relationships involved); (2) positionality (focuses on actor's "power position within a given context [to] identify its potential as an agent or object of domination, or both"); (3) differentiation (how, within a system or context of racial domination "where racial minorities are struggling against white domination, a nonwhite racial group acquires and exercises power over another"); and (4) dominance/transformation ("The extent of one racial group's power over another is determined in part by its alignment with other . . . actors."). *Id.* at 893. Relative power "generates racial harms for which the more powerful group bears responsibility." *Id.* at 892-93.

stratification and the embedded ideological constructions of Orientalism are examined, awareness of the continuation of that basic axis of power and privilege must continue.¹⁰²

It would be a supreme irony if the effects of moving beyond the black/white paradigm by Asian Pacific Americans and other peoples of color were that the African American struggles for equality became beleaguered on multiple fronts rather than just one.¹⁰³

B. The Corruption of the Critique and Anti-Essentialist Rhetoric From the Right

The failure to articulate and proclaim a political agenda in the definition of racial identity has allowed a corruption of the critique of the bipolar paradigm. The fight against white supremacy has often been coopted into a struggle against an inchoate "racism." The Supreme Court has used the image of a multicultural society to recast whites as just another group competing with many others and to transform them into another victimized group.¹⁰⁴ Indeed, the beginnings of using multiminority conflict to assert the rights of whites as if they were no different from other minority groups has become the signature of recent Supreme Court racial jurisprudence.¹⁰⁵

102. Gotanda, *Multiculturalism*, *supra* note 100, at 246; see also Chang, *End of Innocence*, *supra* note 1, at 24-25 ("The model minority myth plays a key role in establishing a racial hierarchy which denies the oppression of Asian Americans while simultaneously legitimizing the oppression of other racial minorities and poor whites."). John O. Calmore articulates the continued limited validity of the black/white paradigm as "the racialized framework . . . [into which] certain other groups have been incorporated, constructed, and oppressed." Calmore, *supra* note 101, at 62.

103. The danger of completely rejecting the applicability of the old black/white paradigm raises the apprehension among African Americans that their continued claims and interests, historically unaddressed, will be diluted and ignored. Calmore, *supra* note 101, at 61.

104. See Natapoff, *supra* note 66, at 1062.

105. *Id.* at 1072. Natapoff writes, "[t]he Court, capitalizing on the diversity of American society, has lifted the stigma from white without addressing the continuing pervasiveness of racial discrimination or the increasingly complex implications of a multiracial polity." *Id.* at 1079. She shows, for example, how the O'Connor opinion in *Richmond v. J.A. Croson Co.* portrays the situation in Richmond simply as multiple racial groups competing as equals for power and wealth, recasting the notion of "minority status" as a "temporary numerically inferior presence in a given locale, rather than a group subject to historic discrimination and in need of systemic remedy." Natapoff, *supra* note 66, at 1075; see also 488 U.S. 469 (1989) (plurality opinion). Natapoff also points out

This worldview directly echoes the fears of many whites that people of color, particularly African Americans, are economically as well-off or are doing better than whites. In a recent national poll, 58% of white respondents held the view that blacks had equal or better jobs than whites.¹⁰⁶ Only 38% of white respondents thought that racism was a significant problem, and 65% of the white respondents saw little difference between social and economic conditions of blacks and whites.¹⁰⁷ These statistics indicate a fear of whites losing their racial hegemony. These fears are compounded by the belief widely held by whites that they now make up less than the majority of the U.S. population.¹⁰⁸

that Justice Powell's *Bakke* opinion recasts "minority" from a historical and political notion of a disadvantaged group to an ahistorical numeric phenomenon. Natapoff, *supra* note 66, at 1071. See *Regents of University of California v. Bakke*, 438 U.S. 265 (1978). As Natapoff argues, the Equal Protection Clause is thus seen as directed not against white racism but against governmental discrimination. Natapoff, *supra* note 66, at 1071.

106. Richard Morin, *A Distorted Image of Minorities: Poll Suggests That What Whites Think They See May Affect Beliefs*, Wash. Post, Oct. 8, 1995, at A1. The telephone poll, conducted by The Washington Post, the Kaiser Family Foundation, and Harvard University, interviewed 1,970 randomly selected Americans, including 802 whites, 474 blacks, 352 Asians, and 252 Latinos. The survey found that 46% of whites felt that blacks had jobs of equal quality to those of whites, 6% said blacks had jobs that were "a little better" than whites, and 6% stated that blacks held jobs that were "a lot better."

107. *Id.* Indeed, according to the same survey, the majority of the middle class white respondents believed blacks were economically on par with whites in terms of jobs (51%), access to health care (54%), and opportunities for education (62%). Kevin Merida, *Worry, Frustration Build for Many in Black Middle Class*, Wash. Post, Oct. 9, 1995, at A1.

108. Priscilla Labovitz, *Immigration—Just the Facts*, N.Y. Times, Mar. 25, 1996, at A15. While the actual percentage of white population in the United States is 74%, whites believe the percentage is under 49.9%. While the actual figure for blacks is about 12%, the white estimation is about 24%. *Id.* It is also striking to note that two of the five countries from which the highest number of undocumented immigrants emigrate to New York City are European. *Id.* On the other hand, after the year 2050, blacks, Asians, Latinos, and Native Americans will probably attain a majority. See, e.g., Brad Edmondson, *The Minority Majority in 2001*, Am. Demographics, Oct. 1996, at 16; Ramon G. McLeod, *Census Shows a Turning Point—Hispanics Increasing the Fastest*, S.F. Chron., Mar. 27, 1996, at A14 (citing a 1996 U.S. Census Bureau report estimating that at some point in the 21st century the non-Hispanic white population will be a minority).

Moreover, fears that immigration is producing economic hardship for the United States are questionable. Immigration adds approximately \$10 billion to the American economy due to an increased labor supply and decreased prices. See Robert Pear, *Academy's Report Says Immigration Benefits the U.S.*, N.Y. Times, May 18, 1997, at A1. Any negative effects such as depressed wages or increased competition for low wage jobs are "relatively small." *Id.* Moreover, "immigration does not have a decisive influence on the economic opportunities of blacks." *Id.* at A24. While in such states as New Jersey and

The careful protection of white interests in an increasingly multicultural society has become the equal protection doctrinal coin of the realm. In *Shaw v. Reno*,¹⁰⁹ where the Court struck down a North Carolina reapportionment plan to create two districts in which African American voters were a majority, the Court based its decision on an assumption that race was an attribute independent of political orientation.¹¹⁰ Since, the Court reasoned, the assumption that individuals of a particular race had common political views was an "impermissible stereotype," racial redistricting constituted a circumstance "antithetical" to representative democracy.¹¹¹ However, as a threshold matter, the fiction that race—even if defined narrowly and solely as skin color—is unrelated to political orientation is wrong from a descriptive standpoint.¹¹² Political orientation and worldview are component parts of shared racial identity.¹¹³ More important, from a normative standpoint, the Court has it backwards. If race definition is partly an articulation of defined societal and political attitudes, the premise upon which the *Shaw* decision is founded is without any reality—both descriptively as well as normatively.¹¹⁴

Moreover, the consequence of the failure to ground the discussion of racial identity in the context of white supremacy has allowed room for the expression of neoconservative viewpoints to be expressed in anti-essentialist as well as nonbipolar terms in other

California immigration may account for some increased taxes, this is offset by immigrants' helping to "pay the public costs of the aging baby boom generation." *Id.* Thus, "the vast majority of Americans are enjoying a healthier economy" as a result of immigration. *Id.* at A1.

109. 509 U.S. 630 (1993).

110. *Id.* at 647. The Court opined that a reapportionment plan that created a district whose inhabitants had "little in common with one another but the color of their skin" reinforced a perception that members of the same racial group "think alike, share the same political interests, and will prefer the same candidates at the polls." *Id.*

111. *Id.* at 647-48.

112. In his dissent, Justice Stevens cogently pointed out that politicians rely on assumptions that people in particular groups vote in particular ways, that it is possible to allege and show that white majorities vote as a bloc, and that "pervasive racial bloc voting" is a real phenomenon. *Id.* at 678 n.3 (Stevens, J., dissenting).

113. See *supra* notes 32-41, 18-24 and accompanying text.

114. One need only remember the old civil rights term of "Uncle Tom" or the 1970s Asian American epithet of "banana" ("yellow on the outside—white on the inside") to understand how worldview played an important part of defining one's racial identity.

contexts.¹¹⁵ Such viewpoints are apparent in the recent *Hopwood* decision rendered by the Fifth Circuit Court of Appeals.¹¹⁶ Ruling in a challenge brought by four white applicants, the *Hopwood* court held the University of Texas School of Law's admission policy unconstitutional. That policy evaluated African American and Mexican American candidates differently so as to admit a class comparable to those graduating from Texas undergraduate institutions.¹¹⁷ The court ruled against that policy despite the indisputable fact, acknowledged by the Fifth Circuit, that the law school had historically discriminated against African Americans. The court made the implicit admission that even some members of the law school faculty and administration may have remained from that era.¹¹⁸

What is particularly relevant is how the Fifth Circuit characterized racial diversity. It saw it as "simply [achieving] a student body that looks different," concluding that, "[s]uch a criterion is no more rational on its own terms than would be choices based upon the physical size or blood type of applicants."¹¹⁹ The court used anti-essentialist language to justify its approach decrying the assumption that racial

115. See Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 Colum. L. Rev. 1573 (1996). Volpp names the phenomenon in the academic environment as "backlash scholarship." *Id.* at 1575. Backlash scholarship "attempts to preempt debate on the difficult questions raised by such subjects as multiculturalism and race" by employing four strategies: denying that scholarship such as critical race scholarship exists; asserting that such scholarship is invalid as scholarship; redefining or appropriating "key imagery, terms and tropes that are distorted and redeployed in the service of what has been named 'meritocratic fundamentalism'"; and misrepresenting previous literature. *Id.* at 1575.

116. See *Hopwood v. State of Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied sub nom*, *Thurgood Marshall Legal Society v. Hopwood*, 116 S. Ct. 2580 (1996).

117. *Id.* at 934.

118. *Id.* at 953 ("The vast majority of the faculty, staff, and students at the law school had absolutely nothing to do with any discrimination that the law school practiced in the past.").

119. *Id.* at 945. Other than the simplistic biological definition of race explicitly suggested by the Fifth Circuit, it is striking that even on its own terms, the Fifth Circuit cannot see that the change from a historically monochromatic student body to one where there is merely a diversity of appearance would constitute a sea change in the context of the atmosphere and dynamics of the University of Texas. Indeed, the preliminary post-*Hopwood* admissions numbers at the University of Texas Law School indicate that black students admittees dropped from 5.9% to 0.7% and Latino admittees dropped from 6.3% to under 2.3%. Ellis Cose, *The Color Bind*, *Newsweek*, May 12, 1997, at 58.

characteristics implied anything about thought or behavior.¹²⁰ By ignoring the social and political implications of racial intercourse, the *Hopwood* court was forced to return to defining race as merely a circumstance of skin color—a standard rejected seventy-five years ago by the Supreme Court.¹²¹

The use of anti-essentialist language to discredit progressive racial identification occurs in contexts other than lawsuits. In his attack on “racial fundamentalism,” Professor Jim Chen posits a “creole republic” in which racial discourse cannot be reduced to two ethnic black/white poles.¹²² Indeed, he makes the undeniable observation that “[r]ace, as a human category, has no biological significance at all.”¹²³ As Chen himself so aptly demonstrates in his own words, “[l]ooks do not equal voice.”¹²⁴

Thus, the poverty of Chen’s position lies not in the descriptive, but in the political assumptions upon which his conclusions rest. He recounts a story in which Asian American students viewed him with suspicion when he applied for a position at Boalt Hall (the University of California at Berkeley School of Law), because he balked at the “bitter coolie labor” he would be asked to perform by serving as their

120. *Hopwood*, 78 F.3d at 946 (quoting Richard A. Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 Sup. Ct. Rev. 12 (1974)).

121. *Ozawa v. United States*, 260 U.S. 178, 197 (rejecting skin color as “impracticable” for determining race since there were some whites darker than “persons of the brown or yellow races”); see also Gotanda, *A Critique*, *supra* note 1, at 30 n.119 (discussing *Ozawa* and the Court’s rejection of skin color in determining who was a “white person”). I also discuss this irony in the context of another article. See Chris Iijima, *Swimming From The Island of the Colorblind: Deserting an Ill-Conceived Constitutional Metaphor*, 17 Loy. L.A. Ent. L.J. 583 (1997).

122. Chen, *supra* note 63, at 155, 160. Chen’s assertion of his “right” to marry whomever he wants irrespective of racial considerations lies at the heart of his analysis—as if his personal choice of partner had anything substantive to do with a political critique of white supremacist ideology. For a comprehensive critique of Chen’s article by a number of scholars and Chen’s response, see *Colloquy*, 81 Iowa L. Rev. 1427-1628 (1997).

Moreover, as Professor Leonard Baynes reminds us, people of African ancestry are not of pure African ancestry, multiracial unions took place in a racially-subordinate context, and that regardless of hue and mixed race ancestry, blacks have been always categorized as black. Leonard M. Baynes, *Who Is Black Enough For You? An Analysis Of the Northwestern University Law School’s Struggle over Minority Faculty Hiring*, 2 Mich. J. Race & Law 205, 215 (1997) [hereinafter Baynes, *Who Is Black Enough?*].

123. Chen, *supra* note 63, at 162.

124. *Id.* at 155.

role model.¹²⁵ He complains that the students would "scrutinize [his] political beliefs" in their search for an "authentic" Asian American role model.¹²⁶

Indeed, Chen's politics *are* at the heart of his "authenticity." He assumes that white supremacy has no pervasive impact on nonwhites, that it is neither permanent nor predominant and that to suggest that people of color cannot attain equal justice within traditional channels is "racialist dogma."¹²⁷ The heart of my disagreement with those like Chen and Clarence Thomas lies not with their critiques of an essentialist racial definition, but with their political analysis of the effects of racism in American society on people of color.

The failure of people of color to articulate racial identity in political terms confuses issues of racial diversity in other contexts. Professor Maria O'Brien Hylton, a woman of white Australian and Black Cuban ancestry, applied for a teaching position at Northwestern University Law School in 1995. Her appointment was opposed by, among others, Professor Joyce Hughes, an African American law professor, on the basis that irrespective of her phenotype Hylton should not be considered a "Black candidate" since African American students should "benefit from persons on the faculty who validate them."¹²⁸ However, the underlying issue was not, in essence, phenotype or even ancestral background, but the political content of the appointment. The hesitation on the part of the students of color who opposed her appointment was not on phenotype grounds but on the political grounds that she was unwilling to identify herself expressly as a candidate of color.¹²⁹

125. *Id.* at 148. Chen describes how Asian students inquired into his willingness to be a role model and mentor and how he soon realized that "no mountain of gold, no purchase of academic prestige could serve as adequate wages for the bitter labor I would be asked to perform." *Id.* (footnotes omitted). He actually goes on to define this "bitter labor" as "coolie" labor. *Id.* at 148 n.21.

126. *Id.*

127. *Id.* at 155.

128. Baynes, *Who Is Black Enough?*, *supra* note 122, at 227. Professor Baynes's article discusses the circumstances of the Hylton controversy from the perspective of the inadequacy of an essentialist position in opposing Professor Hylton's candidacy. *Id.* at 209.

129. Baynes points out that the thread of the student complaints about O'Brien Hylton "was the fear that Northwestern would consider [her] a 'minority' appointment . . . and then feel less pressure to hire minorities and women in the future." *Id.* at 212. Student leaders stated that "[t]here's a lot more to this than black people supporting each

Leonard Baynes points out that the "Black enough" ancestry litmus test that was proposed by Hughes was unworkable; it could not coherently evaluate the ability of a candidate of color to bring diversity to the institution.¹³⁰ According to Baynes, "Black enough" must include mentoring students of color, serving as role models to communities of color, and discussing with colleagues issues and attitudes negatively affecting people of color.¹³¹ These are political criteria—a *de facto* political litmus test—and there is no constructive purpose served by shrinking from the implications of that debate.¹³² Communities of color must define the content of their own identity, and the decision of who brings "racial diversity" to an institution must be made by representatives of the community with a voice in harmony with their interests. Thus, in an affirmative action context it must be students, faculty, and representatives of the larger community of color that have input into the screening and hiring of all candidates. They must be given significant and major influence with respect to those of color. Without such influence students will be increasingly faced with Clarence Thomases, perhaps ancestrally "Black enough" but woefully inadequate from any progressive community perspective.¹³³ As Angela Y. Davis explains:

[I] cannot resist the temptation to evoke Clarence Thomas. Not that I claim a relationship with Clarence Thomas, even though we are racially marked in the same way and to a certain extent share a common historical culture. For example, he claims a relationship with Malcolm X. So do I. He claims a relationship to the Black Panther Party. So do I. But there is a political demarcation that defines my relationship

other simply because our skins match." Rohan Preston, *Battle to Keep Black Professor Leaves Bruised Egos and Reputations*, N.Y. Times, Mar. 8, 1995, at B8 (quoting Sean T. Carter, then-president of the Northwestern Black Law Students Association). Monica Santiago, then-co-president of the Hispanic Law Students Association, was quoted as saying that the "concern was that, if you're not trying to present yourself as a minority candidate, what does that tell us about you? The total picture was not good." *Id.*

130. Baynes, *Who Is Black Enough?*, *supra* note 122, at 231-32.

131. *Id.* at 225.

132. In a previous article, I discussed the use of surrogate fictions in the context of jury deliberations. Fictions are used by juries to get around the real underlying issues of justice that the jury wishes to discuss but is disabled from considering by the jury instructions. David Dorfman & Chris Iijima, *Fact, Fictions, and Forgiveness: Jury Nullification in a New Context*, 28 Mich. J.L. Ref. 86 (1995).

133. Baynes, *Who Is Black Enough?*, *supra* note 122.

to that political culture in a way that is very different from his. Cultures are not politically neutral. A multiculturalism that does not acknowledge the political character of culture will not, I am sure, lead toward the dismantling of racist, sexist, homophobic, economically exploitative institutions.¹³⁴

Thus, the notion of "diversity" as simply describing an apolitical divergence of views about the "conceptions of life,"¹³⁵ and not implicating shifts of power relationships within institutions, is not limited to courts. Moreover, this uni-dimensional view of race and power relationships in society, exhibited by the Fifth Circuit in *Hopwood* or the Supreme Court in *Shaw* cannot be attributed solely to a failure of the black/white paradigm to address the complexities of racial life in American society. It is a reflection of the general society's articulation of assumptions and conclusions that have been infected by an inability or an unwillingness to consider any perspective different from the "norm."

C. The Danger of Pragmatically Appealing To the "Middle"

Some scholars approach racial politics as a matter of pragmatism and tactics. There has been a recent suggestion to articulate race issues in a way to win over the "political middle."¹³⁶ This

134. Angela Y. Davis, *Gender, Class, Multiculturalism, Rethinking "Race" Politics in Mapping Multiculturalism* 40, 47 (Avery F. Gordon & Christopher Newfield eds., 1996).

135. *Hopwood*, 78 F.3d at 946.

136. Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 Harv. C.R.-C.L. L. Rev. 1, 14 (1996). Professor Kang expressly asks how affirmative action programs can be done in a manner "that will garner support from the political middle and a post-Adarand Supreme Court." *Id.* at 47. According to Kang, a defense of affirmative action should not rely "too heavily on a rhetoric of victim and oppressor groups, which regardless of its merits fails to persuade the political middle." *Id.* at 21.

While I disagree with Professor Kang's approach, his orientation toward effecting real change in the context of certain political realities is highly instructive. Indeed, an important strategic question is how to persuade the middle to come to a more progressive political view. Perhaps where we differ is in our definitions of who, what, and where the middle is, and from where real change will come. I believe it will come not from the winning over of a Justice who has made her views on "colorblind" racial jurisprudence clear, but from a change in society's political understanding and consensus. Moreover, and unhappily, I confess that while I may be critical of Professor Kang's insightful attempt to bring racial justice into greater focus, I bring no immediate practical alternative solution to the discussion except the broad admonition that the primary focus

pragmatism is fundamentally different from a support by people of color for a discourse about legal rights. While ultimately unsatisfying from a long range political standpoint since it lends support to the notion that law is fixed and determinate, discourse about legal rights is nevertheless an important weapon in the arsenal of subordinated people because it lends moral and political legitimacy to the struggle for equality.¹³⁷ On the other hand, naked political pragmatism cannot hold out a transformative vision of a different society. Ultimately, it may reinforce the very preconceptions that the dominant culture has imposed.

Under one such pragmatic approach, issues like affirmative action are viewed from an analytic framework in which the "individual has the right not to suffer disadvantage from a governmental practice that conveys an objective social meaning of stigma."¹³⁸ Under this

should be on political organizing and education. Professor Kang has made a real contribution to this process with his work on affirmative action. *See infra* notes 139-40 and accompanying text.

137. One of the areas in which Critical Race Theory differs from Critical Legal Studies (CLS) is that CLS tends to downplay the notion of legal rights as "one of the ways that law helps to legitimize the social world by representing it as rationally mediated by the rule of law." Crenshaw et al., *Introduction*, in *Critical Race Theory*, *supra* note 1, at xxiii. However, for Critical Race Theory:

[R]ights discourse held a social and transformative value in the context of racial subordination that transcended the narrower question of whether reliance on rights could alone bring about any determinate results. . . . [T]he very notion of a subordinate people exercising rights was an important dimension of Black empowerment during the civil rights movement, significant not simply because of the occasional legal victories that were garnered, but because of the transformative dimension of African-Americans re-imagining themselves as full, rights-bearing citizens within the American political imagination.

Id. at xxiii-iv.

138. Kang, *supra* note 136, at 24. Professor Kang poses a "banned meanings" test and notes that Justice O'Connor has applied an objective social meaning construct to First Amendment issues in which she asks whether an objective observer would consider the law to "convey a message of endorsement." He also notes that she has applied such an approach to race issues as well by "analogizing the question of whether an objective observer will interpret a governmental action as endorsement to 'the question whether racial or sex-based classifications communicate an invidious message.'" *Id.* at 28 (citing O'Connor's concurrence in *Lynch v. Donnelly*, 465 U.S. 668, 694 (1984) (O'Connor, J., concurring)) (emphasis in original). He also notes that in O'Connor's First Amendment

framework the court must consider the issues from the different parties' perspectives and then attempt to reconcile the viewpoints.¹³⁹

An attempt to ground the Court's approach in the consideration of equal protection issues from a multi-perspectived position makes a valuable contribution to equal protection analysis jurisprudence. The problem is whether courts—and in particular, the Supreme Court—are able to understand issues from perspectives uninfected by their own unconscious racial attitudes and ideology.¹⁴⁰ Indeed, the assumption that "it is hard to argue that affirmative action conveys the objective social meaning that whites—because they are white—deserve society's antipathy or indifference"¹⁴¹ is belied by the fact that the Supreme Court itself, by recasting whites as another potentially victimized group in a multicultural environment, has already signaled that as its view.¹⁴²

endorsement theory the analysis is from the perspective of a "reasonable third-party observer," while under Kang's "banned meanings" approach to equal protection analysis, the responsibility is placed upon an "empathic" court. *Id.* at 29, 31.

139. *Id.* at 42. It is worth comparing the approach by Charles Lawrence in his "cultural meaning test" since it appears similar to Kang's "banned meanings" approach in that each focuses on perceptions of governmental actions in terms of their implied racial content. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan. L. Rev. 317, 356 (1987) [hereinafter Lawrence, *The Id*].

First, Lawrence tries to address, albeit inconclusively, the dilemma of determining from whose perspective racial meaning should or can be derived when cultural meanings conflict. *Id.* at 379 n.293. Lawrence concedes that accepting the dominant culture's determinations of racial meaning may be problematic since "the minority subculture may well see the dominant culture more clearly than the dominant culture sees itself." In those cases, the meaning of governmental action may be better evaluated from the perspective of the subgroup affected. *Id.* Lawrence explicitly does not apply his cultural meaning test in the context of affirmative action since the test measures racial meaning in circumstances where there is facial neutrality, whereas in affirmative action, the racial component is "evident." *Id.* at 379 n.294. Lawrence's purpose may be different from Kang's in that Lawrence concerns himself with articulating a more sophisticated approach to the issue of unconscious racism within equal protection doctrine. *Id.* at 387. Kang, on the other hand, focuses on an analytic framework for equal protection analysis within the context of affirmative action.

140. Kang, *supra* note 136, at 32 (admitting that examples of opinions incorporating empathic reasoning by certain Justices "do not prove that the individuals who constitute our federal and state judiciary are especially empathic persons").

141. *Id.* at 45.

142. See Natapoff, *supra* note 66, at 1062. In fact, the prevailing ideology behind the recent California Civil Rights Initiative (Proposition 209) is precisely that whites are a victimized racial group. See, e.g., Jesse L. Jackson, 1995 Symposium Statement, 38 How. L.J. 449, 456 ("Clearly, an economically anxious and frightened population, cruelly

As Charles Lawrence points out, racism can be "well-intentioned" and unconscious.¹⁴³ He reminds us that:

Judges are not immune from our culture's racism, nor can they escape the psychological mechanisms that render us all, to some extent, unaware of our racist beliefs. . . . Judges continue to come primarily from elite white backgrounds. They undoubtedly share the values and perceptions of that subculture, which may well be insensitive or even antagonistic toward the values, needs, and experiences of blacks and other minorities.¹⁴⁴

Thus, faith in the courts' ability to go beyond their own "colorblindness" to address issues of race from a perspective that will account for the conscious and unconscious, historic and continuing effects of white supremacy may well be naive and ultimately, disarming. The Supreme Court itself has signaled the jurisprudential legitimacy of the assault against the interests of people of color. Whatever the ultimate analytical framework, the Court's decisions are rooted in political assumptions about how power is allocated, perpetuated, and gained.

manipulated to believe that their troubles are caused by job losses to African Americans, Latinos and women, will more than likely vote against affirmative action and against racial justice and gender equality." (referring to Proposition 209)). For a comprehensive view of Asian Pacific Americans and affirmative action see Chin et al., *Beyond Self Interest*, *supra* note 27.

143. See Lawrence, *The Id*, *supra* note 139. He notes:

[R]acially prejudiced behavior that is actually the product of learned cultural preferences is experienced as a reflection of rational deduction from objective experience, which is nonprejudicial behavior. The decisionmaker who is unaware of the selective perception that has produced her stereotype will not view it as a stereotype.

Id. at 339.

144. *Id.* at 380.

CONCLUSION

The construction of racial identity is a fluid process. More fundamentally, it is a political one. Discussions of racial diversity often have focused upon attributes of racial identity and described the complexity of its definition, but have avoided the harder question of the ultimate importance of it. Perhaps, given the conservative drift of the country in general, the fear of "political correctness" labels has driven this debate underground. Surrogate terms such as ancestry or role modeling have replaced the more explicit terms of debate. But it is time for people of color to reclaim the racial vocabulary and to reframe the construction and discussion of racial identity back where it belongs—as a means of politically organizing ourselves. Indeed, it is either a function of irony or denial that those on the right who decry "political correctness" so often fail to acknowledge in their self-righteousness the political orthodoxy and catch-phrases of the right, such as "traditional values" or "colorblindness." Moreover, those who would decry the construction of racial identity in the political interest of subordinated people conveniently forget or disregard that racial categories themselves were a political construction imposed upon people of color in the first instance.

But racial identity cannot be discussed, much less understood, without undertaking an analysis of what politically serves subordinate races, the poor and the powerless in society. This Article advocates no particular solution and no particular "party line." On the contrary, the struggle among various viewpoints will raise the general level of understanding. But it does suggest that we need to engage each other in political and ideological debate within, among, and without races about what having a just and fair society means and how best to achieve it. Irrespective of how the process and results are depicted by the larger society, people of color must control the definition of our own racial identity. The construction of racial identity cannot be done solely in the confines of the mind or the classroom or the pages of academic articles. We will forge our identities in the new millennium in the crucible of concrete struggle with the burning issues of the day.

Finally, progressive political direction and agenda are at the heart of racial identification. Repairing the division between and understanding the commonality within and among races will be achieved primarily not by academics constructing or even understanding categories of color or culture. It will be through learning the lessons history teaches about the construction of racial identity and

in heeding the activist direction in which history points. Most fundamentally, it will be by defining ourselves in the process of taking a stand for the interests of the vast majority of people who have little time to read learned thoughts, but have daily cause to worry about their children's future.